

COMMITTEE ON DENTAL AUXILIARIES

PART V: ALTERNATIVES TO CURRENT REGULATORY SYSTEM

- **TOTAL DEREGULATION**
 - **VOLUNTARY PRIVATE CERTIFICATION**
 - **STATE TITLE CERTIFICATION OR REGISTRATION**
 - **COMMITTEE STRUCTURE**
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Discussed below are alternatives to the present method of regulation and the positive and negative impacts that each might have on the public. Also included in this section of the report are alternatives to the current structure of the Committee.

SECTION 1: TOTAL DEREGULATION

Total de-regulation would mean a dentist could employ any person whom he or she desired to perform the functions which only licensed personnel can currently perform. Educational, experience, examination, and criminal history review requirements would be eliminated.

Potential Benefits to the Public:

- Reduction in the size of government.
- Free, open market competition, which may result in decrease in price of dental services if supply of auxiliaries increases.
- Lower auxiliary salaries, which may be passed on to consumers by their dentist-employers.
- Incompetent or unscrupulous behavior may be deterred if stricter civil or criminal penalties accompanied de-regulation.

Potential Negative Impact on the Public:

- Unscrupulous, incompetent, or negligent dentists would allow untrained auxiliaries to perform procedures on patients which they are not competent to perform, which may result in physical harm to the public in terms of the spread of infectious diseases and/or bodily injury.
- Unscrupulous auxiliaries would, with or without the approval of their employer, perform procedures on patients which they are not competent to perform, which may result in physical harm to the public in terms of the spread of infectious diseases and/or bodily injury.
- Auxiliaries, as employees, have less financial incentive to defraud consumers, and those that are educated and licensed may be more likely to report dentists who are operating illegally.
- Practice by incompetent auxiliaries would raise the overall cost of dental care to the public, since improperly performed procedures must be repeated.
- Consumer harm could result from the practice of auxiliaries who have criminal backgrounds related to sexual misconduct or alcohol and/or substance abuse.
- No mechanism would exist to discipline incompetent or dishonest practitioners, or permanently remove them from dental practice
- Since auxiliary competence would be solely judged by the individual dentist, a lack of baseline competency would create different levels of care.
- Since educational programs would no longer be scrutinized and approved based on extensive and consistent criteria, employers would have difficulty in evaluating the educational preparedness of potential employees to practice safely on patients.
- The auxiliary professions may not be as attractive as a career, which could result in a smaller supply of auxiliaries, and therefore an increase in the cost of dental services to the public.
- Since many states regulate dental auxiliaries, California may attract those who do not qualify to practice in other states, further increasing potential consumer risk.

Conclusion:

Analysis in previous parts of this report show that there is a significant threat to the public health and safety if the auxiliary professions were deregulated. Competency of licensed auxiliaries is currently assured, and thus the public protected, by administering qualification examinations, conducting criminal history background investigations, and through enforcement of the laws that protect consumers from fraudulent or incompetent practice.

Like practitioners in many of the health care professions, dental auxiliaries cannot readily be evaluated by most consumers. The patient lacks the technical expertise to evaluate what dental care has been performed in his/her mouth, and whether it has been performed properly. Most often, the consumer is not even able to see the areas treated. Unless there is considerable pain and visible trauma to the treated area, the consumer will usually not question the treatment nor be able to assess the adequacy of treatment.

According to a survey of California consumers conducted in the Summer of 1996, 98% felt that dental assistants who worked inside their mouths should be licensed in California, with 95% responding that they would feel unsafe without the licensing requirement.

The harm that can result from the improper performance of procedures by auxiliaries includes the following:

- ▶ **Physical injury and death** can occur through the improper performance of dental procedures, through aspiration into the lungs or ingestion of dental materials; misuse of sharp instrument, caustic agents, local anesthetics, or other dental materials; or, failure to take a proper medical history and/or assure that appropriate premedication has occurred.
- ▶ **Later physical harm** can occur, which is difficult if not impossible for the consumer to detect nor to attribute to the incompetence of an auxiliary. As a simple example, improperly tied orthodontic archwires, over a period of time, can cause actual root resorption and loss of teeth years later.
- ▶ Patients and others can be harmed through the performance of procedures without the **proper handling and disposal of hazardous wastes** such as bodily fluids and tissue, mercury, acids, and contaminated needles.
- ▶ Patients and others can be harmed through the performance of procedures without carefully following prescribed infection control procedures, which can result in the **transmission of an increasing variety of infectious and deadly diseases**, including HIV, AIDS, hepatitis B and C, and tuberculosis.

- ▶ ***Unseen financial harm*** can occur to consumers through the incorrect performance of procedures, since the procedure must be repeated for an acceptable result. When this occurs on more than a rare basis, the over-all cost of dental services to the consumer rises.

Since the national trend is toward the delegation to auxiliaries of increasingly complicated procedures, and less supervision by dentists, licensure will be even more critical. Deregulation at this time would eliminate an important mechanism to gauge the current competency of auxiliaries with a view towards whether they can practice safely in an even more expanded role of service to the public.

The licensure process also prevents criminals convicted of sexual misconduct or substance abuse from working on patients. Dentist-employers **do** not and **would** not have access to criminal history records of employees in order to assure their safety to practice on patients.

SECTION 2: VOLUNTARY PRIVATE CERTIFICATION

Voluntary private certification would also mean that a dentist could employ any person he or she desired to perform the functions which currently only licensed personnel can perform. Educational, experience, examination, and background criminal history investigations would be eliminated.

This option may provide competent and honest dentist-employers with additional data on which to base an employment decision, since he or she may be able to investigate the educational, experience, or examination requirements which led to such certification.

However, the same positive and negative effects to the public which would result from deregulation would also apply to voluntary certification, since some unscrupulous, incompetent, and negligent dentists would still exist.

SECTION 3: STATE TITLE CERTIFICATION OR REGISTRATION

"Title" certification at the State level, meaning that only those who have registered with the State would be able to use the "title" of, for example, Registered Dental Assistant, would result in the same positive and negative impacts on the public as voluntary private certification.

An alternative form of regulation, such as mandatory registration (with no educational, experience, or examination requirements), would have the following slightly different effects on public protection than either deregulation, voluntary private certification, or State title certification:

Potential Benefits to the Public:

- Reduction in the size of government, since a registration program is less expensive to administer than a full licensure program.
- Elimination of educational and/or examination requirements may increase competition, which may result in decrease in price of dental services if the supply of auxiliaries increases as a result.
- Compared to de-regulation, consumer harm would be less likely from the practice of auxiliaries that have criminal backgrounds related to sexual misconduct or alcohol and/or substance abuse, assuming the registration requirement included a criminal history background investigation.
- Compared to de-regulation, a mechanism would exist to discipline incompetent or dishonest practitioners, or permanently remove them from dental practice.

Potential Negative Impact on the Public:

- Unscrupulous, incompetent, or negligent dentists would allow untrained auxiliaries to perform procedures on patients which they are not competent to perform, which may result in physical harm to the public in terms of the spread of infectious diseases and/or bodily injury.
- Unscrupulous auxiliaries would, with or without the approval of their employer, perform procedures on patients which they are not competent to perform, which may result in physical harm to the public in terms of the spread of infectious diseases and/or bodily injury.
- Practice by incompetent auxiliaries would raise the overall cost of dental care to the public, since improperly performed procedures must be repeated.
- Since many states regulate dental auxiliaries, California may attract those who do not qualify to practice in other states, further increasing potential consumer risk.
- Since competence would be solely judged by the individual dentist, a lack of baseline competency would create different levels of care.

- Since educational programs would no longer be scrutinized and approved based on extensive and consistent criteria, employers would have difficulty in evaluating the educational preparedness of potential employees to practice safely on patients.
- The auxiliary professions may not be as attractive as a career, which could result in a smaller supply of auxiliaries, and therefore an increase in the cost of dental services to the public.

Conclusion:

Essentially the same conclusion is reached as for Total Deregulation discussed earlier: there is a significant threat to the public health and safety if the auxiliary professions were certified or registered rather than licensed. Competency of auxiliaries is currently assured, and thus public harm **prevented**, by requiring minimal educational requirements and administering qualification examinations prior to practice.

SECTION 4: COMMITTEE STRUCTURE

The Committee is a separate entity from the Board of Dental Examiner in that it is comprised of separate gubernatorial appointees and empowered to appoint its own staff. However, the Committee is statutorily within the jurisdiction of the Board, and has no separate regulatory or enforcement powers.

Following are some of the potential benefits and negative impacts which may result to the public by the elimination of the Committee and corresponding transfer of the functions it has historically performed back to the Board:

Potential Benefits to the Public:

- Economies of scale might decrease costs.
- Applicant, licensees, and the public would have a single point of access for all questions and concerns about all dental practitioners.

Potential Negative Impact on the Public:

- The Board is comprised of 8 dentists and 4 public members, but only 2 licensed auxiliaries, although there are 38,000 licensed auxiliaries and only 29,000 licensed dentists. Elimination of the Committee would eliminate an important forum for discussion of issues affecting the public health and safety as they relate to auxiliaries that may not occur if they were brought to a Board comprised predominantly of dentists.
- Larger organizations can be less effective, efficient and responsive than smaller ones.
- The quality of the examination process may diminish, if the Board focuses its resources and priorities on dentist-related issues and programs.

Analysis of Other Jurisdictions

The trend in other jurisdictions is toward either increased membership of auxiliaries on dentistry boards, or the establishment of totally separate regulatory structures.

In 1975, the Canadian province of **Quebec** was the first to establish an autonomous, self-regulating body for the licensure of hygienists, followed by the provinces of **Ontario** and **Alberta** by 1991.

Effective July 1, 1994, **New Mexico** established a separate committee to examine, license, and discipline hygienists, which is comprised of five dental hygienists, one dentist, and one public member. **Washington** State has two dental boards: one for examination and one for discipline. They also have a separate dental hygiene examining committee which directly advises the Director of Health rather than the dental board. In **Maryland**, Committee members are also members of the Dental Board.

The states of **Florida**, **Texas**, **Delaware**, and **Arizona** all have separate auxiliary committees similar to California. In Florida and Delaware, proposals are being considered to increase the powers of their Committees. Independent sunset reviews in the 1990's in **Maryland**, **Arizona**, and **Hawaii** all recommended substantial increases in auxiliary membership on the governing boards.

A 1980 Report to the U.S. Congress by the Comptroller General stated: "State dental boards, most of which consist only of dentists...are responsible for determining functions that can be safely performed by dental hygienists and dental assistants...These boards generally expressed the opinion that EFDAs (expanded function dental assistants) do not possess the training, skill, and/or judgment to safely perform this function. However, no board could provide factual evidence to support this position."¹

¹ Report to the Congress of the United States, "Increased Use of Expanded Function Dental Auxiliaries Would Benefit Consumers, Dentists, and Taxpayers", Comptroller General, March 7, 1980.

In a 1991 sunset review report to the **Maryland** legislature prepared by the Department of Fiscal of the Board of Dental Examiners in that state, it was found that:

"There is a conflict of interest between dentists and dental hygienists. Regulation of dental hygienists is inherently problematic because dentists are their primary employers. The U.S. Federal Trade Commission has observed that dentist representatives on dental regulatory boards have a vested interest in defining, regulating, and controlling the practice of dental hygiene and otherwise influencing its development. The policy of regulating dental hygiene practice through regulatory boards dominated by dentists raises concerns about market competition, education, licensure, practice, and civil rights."

"Since the late 1960's...government committees and agencies in both the U.S. and Canada, recommended either representation of dental hygienists as members of dental regulatory boards, or separate dental hygiene regulatory boards. The reasons most frequently cited concern infringement of civil rights when dental hygienists are regulated without representation, reduced competition in the dental health market due to restrictive regulation of dental hygienists, and the potential for conflict between the public interest and the economic self-interest of dentists."

"In order to eliminate this self-interest and to minimize the inherent conflict between dentists and dental hygienists, there must be adequate representation of hygienists on the board. Consequently, dental hygienists must have the authority to define and regulate the practice of dental hygiene...It is recommended, therefore, that the General Assembly enact legislation to reduce the number of dentists on the board from nine to seven and add two additional dental hygienists, for a total of three dental hygienists and two consumer members on the Board of Dental Examiners. In the alternative, if the additional dental hygienists are not added to the board, then the General Assembly should consider enacting legislation to create a separate Board of Dental Hygienists."

In a 1993 sunset review report to the **South Carolina** legislature, the independent Legislative Audit Council similarly recommended that it enact a law to modify the composition of the Board of Dentistry to more accurately represent the interests of both dentists and dental hygienists, or create a separate board to regulate dental hygienists.

In its October, 1993, Sunset Evaluation Update report on dental hygienists to the Governor and Legislature, the Auditor of the State of **Hawaii** found:

"We recommend that the Legislature...continue the regulation of dental hygienists...and substitute two dental hygienist members for two dentist members on the Board of Dental Examiners....Adequate representation for dental hygienists is particularly important since their interests may conflict with and be outweighed by those of dentists.....Adding dental hygienists to the board may also ensure that issues relating to hygienists receive attention. Only recently did the program act on our recommendation to discontinue the inappropriate use of dental hygiene students as helpers on the dental hygiene exam. Only now is the board considering ending the unnecessary state written exam. Other dental hygienist issues deserving more attention from

the board are direct versus indirect supervision; licensing of out-of-state licensees; the authority of dental hygienists to complete tooth restorations (which several states permit); and the possibility of independent practice and self-regulation for dental hygienists. Having more dental hygienists on the board could prompt action on these issues."

More recently, a report sent to Congress in 1995 by the **Secretary of the Department of Health and Human Services**, "1993, 9th Report to Congress, Health Personnel in the United States" observed:

"Dental hygienists are the only licensed professionals whose scope of practice and program accreditation is controlled by their employers--dentists. The appropriateness of this has been challenged in a number of States by legislative proposals that would establish separate State licensing boards for hygienists...For its part, ADA has opposed self-regulatory proposals arguing that it would lead to independent practice and that 'unsupervised or independent practice by dental hygienists reduces the quality of oral health care and seriously increases risks to patients.' These claims, however, appear unsupported by any data."

Conclusion:

Elimination of the Committee would not result in any cost savings, since there are no overlapping functions performed by the Committee and the Board. The same number of staff would be required, and Board members or others would be required to perform the functions which Committee members currently perform. As noted earlier in this report, only about \$8,300 per year is expended for Committee member per diem and travel for non-exam activities. The larger Board may have to meet more frequently to address the issues that the smaller Committee addresses.

Elimination of the Committee without a concomitant change in the structure of the Board would reduce the voice in the decision-making process of the largest number of people regulated by the Board. The predominance of dentists on the Board may not assure that appropriate discussion of auxiliary issues affecting the public health and safety would occur.

Elimination would also not assure that the fees paid by auxiliaries would be devoted to the regulation of auxiliaries. In 1978, the Department of Finance and the Legislative Analyst recommended that the funds of the Board and the Committee be separated since the Board was expending 40% of auxiliary revenue on the regulation of dentists. In 1979, the Legislature therefore statutorily separated the funds.

In its April 11, 1994, Summary Report on "Reforming and Restructuring California's Regulatory Agencies", the **Senate Business and Professions Committee Subcommittee on Efficiency and Effectiveness in State Boards and Commissions** stated with regard to the Committee and the Board: *"It would be more efficient for a Board which equally represents dentists and auxiliaries to conduct, approve, and act upon issues" and that the Committee "should be merged or be able to have the tools it needs to be a board by itself."*

However, after a thorough analysis, the Committee believes that it is in the public interest to retain the current structure of the Committee, with streamlining and improvements as detailed in Part VI: Recommendations and Intended Improvements.